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IN THE

Supreme Court of the United States

October Term, 1961

AMERADA PETROLEUM CORPORATION, *Petitioner*

VERSUS

FEDERAL POWER COMMISSION, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Amerada Petroleum Corporation (hereinafter sometimes called "Amerada") respectfully prays that a writ of certiorari be issued by this Honorable Court to review the decision of the United States Court of Appeals for the Tenth Circuit, rendered on July 24, 1961, which affirmed two orders of the Federal Power Commission (hereinafter sometimes called "Commission") rejecting notices of certain contractually authorized rate increases filed by Amerada and depriving Ame-

rada of the benefit of these increases for a period of ten months after they would otherwise have been effective.

OPINIONS BELOW

The opinion of the Court of Appeals, set forth in Appendix A hereto, is reported at 293 F. 2d 572. The orders of the Federal Power Commission (R. 880, 906) affirmed by the Court of Appeals are unreported. These orders are set forth in Appendix C hereto.

JURISDICTION

The decision of the Court of Appeals was rendered July 24, 1961. The jurisdiction of that Court was based on Section 19(b) of the Natural Gas Act, 15 U.S.C. 717r(b). Amerada timely filed a petition for rehearing which was denied by order of the Court of Appeals entered on August 24, 1961. Upon motion of Amerada, the issuance of a mandate was stayed until November 22, 1961, pending the filing of this petition for certiorari. The jurisdiction of this Court is invoked under the provisions of 28 U. S. C. 1254(1).

QUESTION PRESENTED

The pivotal question presented by this petition is whether the Federal Power Commission has authority under the Natural Gas Act[1] to reject arbitrarily notices of contractually authorized rate changes solely because previous rate changes relating to the same sale are, at the time, temporarily suspended.

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[1] 52 Stat. 821, as amended, 15 U.S.C. 717 *et seq.*

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the Natural Gas Act, 52 Stat. 821, as amended, 15 U.S.C. 717 *et seq.*, and of the Commission's Regulations, 18 C.F.R. 1.1 *et seq.*, are set forth in Appendix D hereto.

STATEMENT OF THE CASE

Amerada Petroleum Corporation is an independent producer as that term is defined in Section 154.91 of the Commission's Regulations under the Natural Gas Act. It produces gas from the Permian Basin in Lea County, New Mexico, which it sells to El Paso Natural Gas Company (hereinafter called "El Paso") under nine gas sales contracts which Amerada has filed with the Commission as rate schedules pursuant to the requirements of Section 4(c) of the Natural Gas Act and Section 154.92 of the Commission's Regulations. (R. 1, 178, 229, 312, 370, 451, 533, 587, 630.) By operation of "favored nation" clauses in six of these rate schedules (R. 41, 191, 470, 547, 602, 645), Amerada became contractually entitled to an increased price (13.34802¢ per Mcf) for its gas effective October 1, 1959. By operation of similar provisions in the other three rate schedules (R. 278, 335, 410), Amerada became contractually entitled to the same increased price effective October 9, 1959.

On August 31, 1959, as to the former six rate schedules, and on September 8, 1959, as to the latter three rate schedules, pursuant to Section 4(d) of the Act and Section 154.92 of the Commission's Regulations, Amerada filed with the Commission notices of these contractually authorized rate changes. (R. 89, 207, 290, 350, 429, 506, 564, 609, 655). By orders

issued September 25, 1959 and October 7, 1959, the Commission, pursuant to Section 4(e) of the Act, suspended these rate increased until March 1, 1960 and March 9, 1960, and initiated proceedings concerning their lawfulness.(R. 750, 756).

On October 26, 1959, Amerada and El Paso renegotiated the nine gas sales contracts referred to above, eliminating the "favored nation" clauses contained in the original contracts and increasing the price to 15.5¢ per Mcf effective January 1, 1960. These renegotiated contracts were filed with the Commission on November 30, 1959 as supplements to the original nine rate schedules and as notices of the change in rates. (R. 96, 215, 298, 357, 437, 514, 572, 616, 662). The Commission accepted these filings and, by order issued December 18, 1959, suspended the rate increases until June 1, 1960, and initiated proceedings concerning their lawfulness. (R. 789).

On February 5, 1960, in four letter orders, the Commission advised Amerada that the filings of August 31, 1959 and September 8, 1959 were regarded by the Commission as superseded by those of November 30, 1959, and terminated as moot the proceedings initiated by its orders of September 25, 1959 and October 7, 1959. (R. 803, 804, 805, 806). On February 8, 1960 and February 23, 1960, Amerada filed motions to place in effect on March 1, 1960 and March 9, 1960, respectively, the increased rates filed August 31, 1959 and September 8, 1959. (R. 807, 814, 821, 828). On March 7, 1960, Amerada filed petitions for rehearing and reconsideration of the Commission's orders of February 5, 1960 on the ground that such orders deprived Amerada of the rate

creases filed on August 31, 1959 and September 8, 1959 for a period in excess of the five month statutory limit (R. 843, 850, 858, 866).

On April 5, 1960, the Commission issued its "Order Granting Rehearing and Disposing of the Issues There Raised," the validity of which was challenged by Amerada in Cause No. 6483 in the Court of Appeals (R. 880). In that order the Commission vacated its orders of February 5, 1960, and reinstated the proceedings which it had terminated by those orders. By the same order, the Commission rejected Amerada's filings of November 30, 1959 and terminated as moot the proceedings instituted by the Commission's order of December 18, 1959. The only basis stated by the Commission for this action was as follows:

> "With regard to suspension proceedings under the Natural Gas Act the Commission's general policy and interpretation has been that the rate in effect prior to the suspension period continues in effect and shall not be changed during the suspension period.
>
> "Amerada's November 30, 1959 filings proposed to change rates under suspension and, therefore, were subject to rejection. Instead of rejecting them, the Commission considered them as superseding the prior filings since such action was considered to be less onerous on Amerada. However, in view of Amerada's opposition to this action, and consistent with the Commission's general policy and interpretation under the Natural Gas Act, it is deemed necessary for the proper enforcement of the Act to rescind the Commission's prior permission to file the November 30, 1959, changes in rates and reject them without prejudice to their resubmittal; * * *." (R. 881).